

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF CALIFORNIA

BARTELL HOTELS dba HALF MOON  
ANCHORAGE,

Plaintiff,

v.

M/Y CLAIRE IRENE and all of her  
Engines, Tackle, Accessories, Equipment,  
Furnishings and Appurtenances, *in rem*,

Defendants.

Civil No. 07cv2097-L(BLM)

**ORDER (1) DISMISSING  
COMPLAINT WITH LEAVE TO  
AMEND AND (2) DENYING AS  
MOOT APPLICATIONS FOR  
VESSEL ARREST WARRANT AND  
APPOINTMENT OF SUBSTITUTE  
CUSTODIAN**

Plaintiff filed a Verified Complaint for Vessel Arrest, Interlocutory Sale and for Money Damages for Trespass by Vessel, Breach of Contract for Necessaries, and *Quantum Meruit*. According to the complaint, in January 2007, Plaintiff purchased Half Moon Anchorage ("Marina") from a previous owner. Defendant vessel had been leasing a slip and had already been anchored at the Marina at that time, allegedly pursuant to a written wharfage contract with the previous owner. (Compl. ¶ 6.) Plaintiff maintains it terminated that contract on August 20, 2007 and requested all its lessees to execute a new one. Defendant allegedly refused to execute a new contract and is in arrears. Claims under maritime contracts for wharfage can give rise to maritime liens. *See* 1 Thomas J. Schoenbaum, *Admiralty and Maritime Law* § 9-1 (4th Ed.); 46 U.S.C. § 31342(a).

Plaintiff filed an application to seize Defendant, become its substitute custodian and move it within the Marina. Plaintiff acknowledges there are no exigent circumstances to justify

1 execution of the vessel arrest warrant without court review pursuant to Rule C(3)(ii),  
2 Supplemental Rules for Admiralty or Maritime Claims and Asset Forfeiture Actions. (Weiss  
3 Decl. ¶ 7.)

4 “[T]he need for a quick judicial response [is] usually considerable” in admiralty  
5 proceedings. 12 Charles Alan Wright *et al.*, *Federal Practice and Procedure* § 3222 (2d ed.  
6 1987). This is because “[t]he action in rem is needed to give effect to maritime liens, and those  
7 substantive rights might be eroded if the court’s power to act quickly were obstructed by  
8 procedural requirements.” *Id.* On the other hand, in rem actions requiring a vessel arrest as the  
9 means of obtaining jurisdiction over the vessel are considered drastic prejudgment remedies. *Id.*  
10 § 3242. The supplemental admiralty rules seek to balance the need for quick judicial action with  
11 the procedural-due-process protections against abuse of these remedies. *Id.*

12 Accordingly, the supplemental rules require judicial scrutiny before issuance of a warrant  
13 of vessel arrest. Supp. R. C(3)(a)(I); *see also* 12 Wright, *supra*, § 3222. “Rule C requires that a  
14 judicial officer examine the complaint and supporting papers and order issuance of a warrant  
15 only if justified by . . . ‘a prima facie showing that the plaintiff has an action in rem against the  
16 defendant in the amount sued for and that the property is within the district.’” 12 Wright, *supra*,  
17 § 3222, *quoting* Advisory Comm. Note, 1985 Am. The purpose of this requirement is “to  
18 eliminate any doubt as to the rule’s constitutionality.” Supp. Fed. R. Civ. P. C, Advisory Comm.  
19 Note, 1985 Am.

20 In addition, to commence an *in rem* action to enforce a maritime lien, the complaint must  
21 be verified and must comply with heightened pleading requirements. Supp. Fed. R. Civ. P. C(2)  
22 & E(2)(a). Supplemental Rule E(2)(a) requires “the complaint . . . state the circumstances from  
23 which the claim arises with such particularity that the defendant or claimant will be able, without  
24 moving for a more definite statement, to commence an investigation of the facts and to frame a  
25 responsive pleading.” “It thus requires a more particularized complaint than is demanded in civil  
26 actions generally, or even in admiralty actions in which the special remedies provided for in  
27 Supplemental Rule [C] are not sought.” 12 Wright, *supra*, § 3242. The requirement for added  
28 specifics is thought appropriate because of the drastic nature of those remedies, and to fortify the


1 procedural-due-process protections against improper use of these remedies. *Id.* Plaintiffs often  
2 strive to comply with this requirement by attaching to the verified complaint the pertinent  
3 documents, such as the maritime contracts claimed to give rise to the lien.

4 No wharfage contract is attached to the verified complaint in this action. The existence  
5 and the terms of a wharfage contract between Defendant and the prior Marina owner is stated in  
6 the complaint solely on information and belief. (Compl. ¶¶ 6-7.) It is therefore impossible to  
7 determine whether Plaintiff was able to unilaterally terminate that contract so as to provide basis  
8 for trespass or breach of maritime contract.<sup>1</sup>

9 For the foregoing reasons, the complaint is **DISMISSED WITH LEAVE TO AMEND**.  
10 Any amended complaint must be filed no later than 30 days after this order is stamped "Filed."  
11 Plaintiff's Ex Parte Application for Order Authorizing Issuance of a Warrant for Arrest of  
12 Defendant Vessel and its Application for Appointment of Substitute Custodian and for  
13 Authorization for Movement of Defendant Vessel are **DENIED WITHOUT PREJUDICE** as  
14 moot.

15 **IT IS SO ORDERED.**

16  
17 DATED: November 15, 2007

18  
19   
M. James Lorenz  
United States District Court Judge

20 COPY TO:

21 HON. BARBARA L. MAJOR  
UNITED STATES MAGISTRATE JUDGE

22 ALL PARTIES/COUNSEL  
23  
24  
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27

28 <sup>1</sup> The court also notes that the verified complaint contains certain omissions and errors which render it ambiguous. (*See* Compl. at 2:7-14 & 2:28.)